

## 21 C.J.S. Courts § 337

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### Courts

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### X. Clerks of Courts

### C. Powers and Duties

## § 337. Filing of papers

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Clerks of Courts](#)  66, 67

**Generally, it is the duty of a clerk of court to file documents and papers in a cause presented by the parties for filing.**

Generally, it is the duty of a clerk of court to file documents and papers in a cause presented by the parties for filing<sup>1</sup> and to indorse the correct date of the filing on them.<sup>2</sup> Unless otherwise specifically authorized by statute, the duty of the clerk to file papers presented to him or her is purely ministerial,<sup>3</sup> and he or she may not refuse to perform such a duty except upon the order of the court.<sup>4</sup>

A clerk of court is not concerned with the merit of the papers or with their effect and interpretation;<sup>5</sup> thus, the clerk may ordinarily not reject a pleading on substantive grounds or for lack of conformity with requirements of form.<sup>6</sup> The power to make any decision as to the propriety of any paper submitted, or as to the right to file such paper, is generally vested in the court, not the clerk of court.<sup>7</sup>

Statutes or court rules may, however, expressly authorize the clerk to refuse to accept papers for filing under specified circumstances, such as where a complaint is submitted by a person who has been found to be a "vexatious litigator."<sup>8</sup> In addition, the clerk may be directed by court rule not to accept a pleading which is not accompanied by specified documents.<sup>9</sup> However, a rule requiring a civil case cover sheet to accompany the first paper filed in an action for statistical purposes does not expressly authorize the court clerk to refuse to file a complaint because it is not accompanied by such cover sheet.<sup>10</sup> The clerk, especially upon being informed that immediate filing of the complaint is necessary to satisfy the applicable limitations statute, should file the complaint and simply require counsel to provide the cover sheet later.<sup>11</sup>

***Failure to pay filing fee.***

A clerk may justifiably refuse to file a pleading until the proper fees have been paid,<sup>12</sup> at least in the absence of an affidavit of poverty.<sup>13</sup> However, the court's authority to assess multiple filing fees for multiple plaintiffs does not impose a corresponding duty on the part of the clerk to reject an otherwise valid complaint where such additional filing fees are not initially tendered.<sup>14</sup>

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**Footnotes**

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Cal.—*Voit v. Superior Court*, 201 Cal. App. 4th 1285, 134 Cal. Rptr. 3d 381 (6th Dist. 2011).

Md.—*Blundon v. Taylor*, 364 Md. 1, 770 A.2d 658 (2001).

Ohio—*State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St. 3d 334, 2006-Ohio-1065, 843 N.E.2d 778 (2006).

Wash.—*State v. Flaherty*, 177 Wash. 2d 90, 296 P.3d 904 (2013).
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Haw.—*Price v. Obayashi Hawaii Corp.*, 81 Haw. 171, 914 P.2d 1364 (1996).

Iowa—*Dwyer v. Clerk of Dist. Court for Scott County*, 404 N.W.2d 167 (Iowa 1987).

**In forma pauperis application**

Neb.—*Cole v. Blum*, 262 Neb. 1058, 637 N.W.2d 606 (2002).
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Cal.—*Rojas v. Cutsforth*, 67 Cal. App. 4th 774, 79 Cal. Rptr. 2d 292 (2d Dist. 1998).

Mass.—*Gorod v. Tabachnick*, 428 Mass. 1001, 696 N.E.2d 547 (1998).

Pa.—*Com. v. Williams*, 106 A.3d 583 (Pa. 2014).

**Clerk's liability for failure to perform ministerial duties**

Court clerks are not protected by governmental immunity from suits for negligent failure to perform a ministerial duty imposed by statute.

Ga.—*Hicks v. McGee*, 289 Ga. 573, 713 S.E.2d 841 (2011).

Ill.—*Cowper v. Nyberg*, 2015 IL 117811, 390 Ill. Dec. 115, 28 N.E.3d 768 (Ill. 2015).
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W. Va.—*Cable v. Hatfield*, 202 W. Va. 638, 505 S.E.2d 701 (1998).
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Md.—*Blundon v. Taylor*, 364 Md. 1, 770 A.2d 658 (2001).
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U.S.—*Hooker v. Sivley*, 187 F.3d 680 (5th Cir. 1999).

**Notice of appeal**

In the absence of an order from a judge, a clerk may not refuse to accept a notice of appeal even if the clerk believes that no appeal is available or that the notice is untimely or otherwise defective.

Mass.—*Gorod v. Tabachnick*, 428 Mass. 1001, 696 N.E.2d 547 (1998).

Pa.—*Com. v. Williams*, 106 A.3d 583 (Pa. 2014).

**Failure to verify accuracy of information**

A clerk is not subject to liability for failing to verify the accuracy of information transmitted by another official, such as a sheriff, unless that duty is clearly specified by statute.

Ill.—*Cowper v. Nyberg*, 2015 IL 117811, 390 Ill. Dec. 115, 28 N.E.3d 768 (Ill. 2015).

7 Ohio—*State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St. 3d 334, 2006-Ohio-1065, 843 N.E.2d 778 (2006).

8 Ohio—*State ex rel. Montgomery Cty. Pub. Defender v. Siroki*, 108 Ohio St. 3d 334, 2006-Ohio-1065, 843 N.E.2d 778 (2006).

9 Md.—*Blundon v. Taylor*, 364 Md. 1, 770 A.2d 658 (2001).

W. Va.—*Cable v. Hatfield*, 202 W. Va. 638, 505 S.E.2d 701 (1998).

10 Cal.—*Maginn v. City of Glendale*, 72 Cal. App. 4th 1102, 85 Cal. Rptr. 2d 639 (2d Dist. 1999).

11 Cal.—*Maginn v. City of Glendale*, 72 Cal. App. 4th 1102, 85 Cal. Rptr. 2d 639 (2d Dist. 1999).

12 Ala.—*Farmer v. Farmer*, 842 So. 2d 679 (Ala. Civ. App. 2002).

Cal.—*Duran v. St. Luke's Hosp.*, 114 Cal. App. 4th 457, 8 Cal. Rptr. 3d 1 (1st Dist. 2003).

Ga.—*Slater v. Spence*, 246 Ga. App. 365, 540 S.E.2d 638 (2000).

Tex.—*In re Lewis*, 185 S.W.3d 615 (Tex. App. Waco 2006).

13 Ohio—*Wilson v. Ohio Dept. of Rehab. and Corr.*, 138 Ohio App. 3d 239, 741 N.E.2d 152 (10th Dist. Franklin County 2000).

**Proof of ability to pay fees**

Court clerk must comply with nondiscretionary statutory duty to determine if applicant is eligible for waiver of fees, costs, and security.

W. Va.—*State ex rel. Deblasio v. Jackson*, 227 W. Va. 206, 707 S.E.2d 33 (2011).

14 W. Va.—*Cable v. Hatfield*, 202 W. Va. 638, 505 S.E.2d 701 (1998).